IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 3195 of 2007()

CRA.762/2005 of ADDL.SESSIONS COURT-II, KOZHIKODE
CC.410/2002 of JUDL. MAGISTRATE OF FIRST CLASS-IV, KOZHIKODE

.....

REVN. PETITIONER: APPELLANT/ACCUSED NO.3

P.ASOKAN,S/O. RAMAN,
PANANKANDI PARAMBA,KALATHINKUNNU AMSOM AND DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.P.V.KUNHIKRISHNAN

RESPONDENTS:

STATE OF KERALA
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3195 OF 2007

Dated this the 7th day of September, 2007

O R D E R

The revision petitioner, who is the 3rd accused in C.C.No.410/2002 on the file of the JFCM-IV, Kozhikode for offences punishable under sections 323, 324 and 452 read with section 34 IPC, challenges the conviction entered and the sentence passed against him for the aforementioned offences.

2. The case of the prosecution can be summarised as follows:-

PW1 Sulochana, the defacto complainant, has been residing with her family in the house situated at Kasaba village at Kozhikode. A1 to 3 are the younger brothers of her husband. On 30.3.2002 at about 5.45 p.m. A1 to A3 in furtherance of their common intention to assault PW1 criminally trespassed into her house. A1 beat PW1 on her left hand with MO1 crow bar. A2 beat her with the handle of a spade on the head and A3(revision petitioner) beat her using his hands.

3. On the side of the prosecution, 9 witnesses were examined as PWs 1 to 9. PWs 1 to 4 are the eye witnesses of whom PWs 3 and 4 turned hostile to the prosecution. The prosecution got marked 5 documents as Exts.P1 to 5 and two material objects were got marked as MOs 1 and 2.

4. After the close of the prosecution evidence, the accused were questioned under section 313(1)(b) Cr.P.C. They denied the incriminating circumstances put to them and maintained their innocence. They did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 26.10.05 convicted A2 and A3 for the offences charged against them. For the conviction under sections 452 and 324 IPC, each of them was sentenced to simple imprisonment for six months in addition to a fine of Rs.500/- under section 452 IPC and on default to pay the fine, to suffer simple imprisonment for one month each. For the conviction under section 323 IPC, each of them was sentenced to simple imprisonment for three months. Eventhough accused Nos.2

and 3 preferred separate appeals as Crl.Appeal Nos.762/05 and 811/05 before the II Additional Sessions Court, Kozhikode, as per common judgment dated 28.7.07 the said appeals were dismissed confirming the conviction entered and the sentence passed. Hence this revision by the 3rd accused.

6. Eventhough the learned counsel for the revision petitioner assailed the conviction recorded against the petitioner on various grounds, since the conviction has been entered by the courts below after a careful evaluation of the oral and documentary evidence of the case, I see no ground to interfere with the said conviction. The conviction is accordingly confirmed.

7. What now survives for consideration is the question of adequacy of sentence imposed on the revision petitioner. Having regard to the fact that he is one of the brothers-in-law of the defacto complainant and he had a relatively minor role of slapping of PW1 with bare hands, I am of the view that he does not deserve penal servitude by way of incarceration for

the offences committed. Accordingly, the sentence imposed on the revision petitioner is set aside and he is sentenced to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- (Rupees five thousand only) under section 452 IPC. For the conviction under sections 324 and 323 IPC, the revision petitioner shall pay a fine of Rs.4,000/- (Rupees four thousand only) and Rs.1,000/- (Rupees one thousand only) respectively and on default to pay the fine, he shall suffer simple imprisonment for one month for each of the default. The fine amount shall be deposited within 45 days from today. From out of the fine amount, a sum of Rs.5,000/- (Rupees five thousand only) shall be paid to PW1, the injured, by way of compensation under section 357(1) Cr.P.C.

In the result, this revision is disposed of confirming the conviction entered but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

aks